

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JAN 7 2000

PATRICK FISHER
Clerk

WILLIAM L.E. PUNCHARD, II,

Plaintiff-Counter-
Defendant-Appellant,

v.

LUNA COUNTY COMMISSION,

Defendant-Appellee,

and

STATE OF NEW MEXICO,

Defendant-Counter-
Claimant-Appellee.

No. 98-2356
(D.C. No. CIV-98-147-JC/RLP)
(D. N.M.)

ORDER AND JUDGMENT *

Before **BRORBY** , **PORFILIO** , and **LUCERO** , Circuit Judges.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff William L. E. Punchard, II appeals the district court's order granting the amended motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) filed by defendant State of New Mexico, and the motion for judgment on the pleadings filed by defendant-counterclaimant Luna County Commission. The district court's order also imposed filing restrictions on plaintiff. We exercise jurisdiction under 28 U.S.C. § 1291 and affirm.

Plaintiff's substantive claims involve a challenge to a 1990 transfer by the United States government of its interest in certain land to Luna County. Plaintiff asserts that the transfer interfered with his mining claims to the property. On appeal, he argues (1) the district court improperly considered the defendants' motions instead of permitting the case to proceed to a jury trial, (2) the district judge was prejudiced against him, and (3) without supporting authority or argument, that the district court's rulings were in error.

We review de novo the district court's dismissal under Fed. R. Civ. P. 12(b)(6) and its entry of judgment on the pleadings. See Riddle v. Mondragon, 83 F.3d 1197, 1201 (10th Cir. 1996) (motion to dismiss); Realmonde v. Reeves, 169

F.3d 1280, 1283 (10th Cir. 1999) (judgment on the pleadings). The order imposing filing restrictions on plaintiff is reviewed for an abuse of discretion. See Tripati v. Beaman, 878 F.2d 351, 354 (10th Cir. 1989).

We have carefully reviewed the appellate briefs and the materials submitted. We affirm the district court's order granting defendant State of New Mexico's motion to dismiss, granting defendant-counterclaimant Luna County Commission's motion for judgment on the pleadings, and imposing filing restrictions on plaintiff, for substantially the same reasons stated in the district court's memorandum opinion and order dated November 10, 1998, and entered as a judgment on that date. The district court's January 14, 1999 order imposing filing restrictions is also affirmed.

All pending motions are DENIED. The judgment of the United States District Court for the District of New Mexico is AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

John C. Porfilio
Senior Circuit Judge